28. (New) The polypeptide fragment of claim 22, wherein the fragment comprises an immunoreactive epitope within the protease domain.

29. (New) The polypeptide fragment of claim 23, wherein the fragment comprises an immunoreactive epitope within the protease domain.

30. (New) The polypeptide fragment of claim 24, wherein the fragment comprises an immunoreactive epitope within the protease domain.

31. (New) The polypeptide fragment of claim 25, wherein the fragment comprises an immunoreactive epitope within the protease domain.

REMARKS

I. RESTRICTION REQUIREMENT

The Office Action dated April 26, 2000 required restriction of the claims into 5 claim Groups. In response, Applicants elect Group I, namely claim 1.

However, Applicants do so with traverse. Applicants dispute the assertion by the Examiner that Groups I and II involve separate and distinct inventions.

35 U.S.C. §121 provides that "If two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions." M.P.E.P. §802.01 deviates from the plain meaning of "independent and distinct" by interpreting "and" to mean "or". The Patent Office relies on the absence from the legislative history of anything contrary to this interpretation as support for their position that "and" means "or". Applicants respectfully note that this position is contrary to the rules of statutory construction. Restriction between two dependent inventions is not permissible under the plain meaning of 35 U.S.C. §121.

The Examiner does not assert that the inventions of the Groups I and II are independent. Rather, the Examiner alleges that the inventions of the Groups are distinct because they represent separate and distinct products which are made by materially different methods which have different modes of operation, different functions and different effects. Applicants assert that restriction is

improper because separate significant search efforts should not be necessary to examine Group I and II of the subject application.

Applicants further urge the Examiner take into consideration that the subject matter of each of the claim Groups is linked by a common inventive concept.

According to M.P.E.P. §803, there are two criteria for a proper restriction requirement. First, the two inventions must be independent and distinct. In addition, there must be a serious burden on the Examiner if restriction is not required. Even if the first criterion has been met in the present case, which it has not, the second criterion has not been met.

Applicants assert that a search into prior art with regard to the invention of the different Groups is so related that separate significant search efforts should not be necessary. Accordingly, there is no serious burden on the Examiner to collectively examine Group I and II of the subject application. Therefore, restriction is not proper under M.P.E.P. §803.

Consequently, Applicants respectfully request the Examiner reconsider and withdraw the restriction requirement.

II. Claims In the Application

Dependent claims 20-31 are introduced hereinabove. The polypeptides recited in these claims are fully supported by the specification and do not introduce new matter. For example, in the first paragraph of the summary (page 4, lines 3-11) Applicants teach that the 20P1F12/TMPRSS2 protein is a novel protein which is structurally distinct from the protein previously reported by Paolino-Gacobino et al. In this context, Figure 3 provides a side by side comparison with the previously described protein to illustrate the novelty of the claimed protein and allow the immediate identification of the novel amino acid residues within this sequence (i.e. the valine residue at position 160 the isoleucine residue at position 242, the glutamic acid residue at position 329, the lysine residue at position 449, the arginine residue at position 489 and the aspartic acid residue at position 491). Moreover, fragments of the novel protein sequence shown in Figures 1 and 3 (SEQ ID NO: 2) are discussed for example in the first paragraph of the detailed description (page 7, lines 33-37). In addition, fragments of the 20P1F12/TMPRSS2 protein which comprise an immunoreactive epitope within the protease domain are discussed, for example at page 14, lines 25-32 and an illustrative embodiment of such a fragment is discussed in detail in Example 5.

It is also submitted that this application is now in good order for allowance and such allowance is respectively solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicants' undersigned attorney.

Respectfully submitted,

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By their attorneys,

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